IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.258 of 2000

State by
Sub-Inspector of Police,
Erode Taluk Police,
by Public Prosecutor,
High Court, Madras. .. Appellant

vs.

1.Prabakaran
2.Elango .. Respondents/Accused

Prayer: This appeal has been preferred against judgment dated 30.11.1999 made in C.C.No.145 of 1997 on the file of the learned Judicial Magistrate No.I, Erode.

For Appellant : Mr.V.R.Balasubramanian,
Additional Public Prosecutor.
For Respondents : Mr.S.Kaithamalai Kumaran

JUDGMENT

This appeal has been preferred by the State against the acquittal. Admittedly both the accused A1 and A2 are the sons of P.W.1 the injured, the complainant herein. A1 was charged under Section 326 and 506(ii) IPC and A2 was charged under Section 324 and 506(ii) IPC.

2. The case was taken on file by the learned Judicial Magistrate No.I, Erode, in C.C.No.145 of 1997 and on appearance of the accused on summons copies under Section 207 Cr.P.C., were furnished to the accused and when charges under Section 326 IPC was framed against A1 and charges under Section 324 IPC was framed against A2 along with a charge under Section 506(ii) IPC against both the accused and questioned the accused pleaded not guilty.

3. On the side of the prosecution P.Ws.1 to 13 were examined and Ex.Ps.1 to 10 were exhibited and M.Os.1 to 4 were marked.

4. P.W.1 is the injured complainant, who would depose that on 2.11.1996 at about 9.00 am A1 and A2 who are none other than his sons dug a pit in front of his house, which was opposed to by him and in retaliation A1 assaulted him with a crowbar on his head and both the

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accused jointly attacked him with crowbar on his left hand, left leg, right leg causing grievous injuries and that he was taken to the government hospital by Durairaj and Paramasivam, where he was treated and that Ex.P.1 is the complaint preferred by him and after discharge from the government hospital on the same day, he got himself admitted in a private hospital and took treatment for three days. M.O.1 is the blood stained lungi, M.O.2 is the blood stained underwear and M.O.3 (series) are the crowbars.

5. P.W.2 is a neighbour of P.W.1, who has also corroborated the evidence of P.W.1. He has deposed to the effect that both the accused have assaulted P.W.1 at the time of occurrence with crowbar and that he took the injured in an auto and admitted him in a government hospital for treatment and that the occurrence had taken place on 2.11.1996 at about 9.15 am.

6. P.W.3 has also corroborated the evidence of P.W.1 and P.W.2. He is also an eye witness to the occurrence.

7. P.W.4 and P.W.5 have not supported the case of the prosecution. Hence they were treated as hostile witnesses.

8. P.W.11 is the Head Constable of Erode Taluk Police Station, who on intimation from the government hospital went to the government hospital and recorded the statement Ex.P.7 from P.W.1, who was taking treatment in hospital and registered the case in Cr.No.555/99 under Section 342 and 506 (ii) IPC. Ex.P.8 is the FIR. He had proceeded to the place of occurrence on 2.11.1996 at about 6.30 pm and prepared Ex.P.9 observation mahazar in the presence of P.W.6 and another witness Kandaswamy. He has recovered M.O.3-crowbars from the place of occurrence and also M.O.1-blood stained lungi from P.W.1 in the presence of the same witness.

9. P.W.6 would depose that P.W.1 had handedover M.O.1-lungi and M.O.2-underwear to the police in his presence.

10. P.W.7 is the witness in the observation mahazar-Ex.P.4 for the recovery of M.O.3(series)-crowbars.

11. P.W.8 is another witness in Ex.P.4-mahazar.

12. P.W.9 is the doctor, who has treated P.W.1 on 2.11.1996 at about 10.50 am. Ex.P.5 is the copy of the accident register, which contains the following injuries.

(i) A lacerated injury measuring 5 1/2 cms on the left side of the head.
(ii) A contusion measuring 7 x 3 cms on the upper right hand.
(iii) A lacerated injury on the left palm measuring 2 x 1/2 cms
(iv) A lacerated injury on the right leg measuring 3 x 1/2 cms bone deep.

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(v) A lacerated injury on the middle of the right leg measuring 4 x 1 cm x bone deep.

(vi) A lacerated injury on the right leg in the bottom measuring 4 x 1/2 cm bone deep.

(vii) A lacerated injury on the middle of left leg measuring 4 x 1/2 cms bone deep.

P.W.9 would depose that on the same day P.W.1 was discharged from the hospital at 2.15 pm.

13. P.W.10 is the doctor working in private hospital, who examined P.w.1 on 2.11.1996 at about 3.00 pm and issued Ex.P.6-wound certificate.

14. P.W.13 is radiologist, who had taken M.O.4 x-ray for the fracture sustained by P.W.1 on the right leg.

15. P.W.12 is the investigation officer, who had visited the place of occurrence and examined the witnesses and after completing the investigation had filed the charge sheet on 31.12.1996 under Section 326, 324 & 506(ii) IPC against the accused.

16. When incriminating circumstances were put to the accused, they denied their complicity with the crime. After going through the oral and documentary evidence, the learned trail Judge has come to the conclusion that the prosecution has miserably failed to prove the guilt of the accused beyond any reasonable doubt and accordingly acquitted both the accused against the respective charges levelled against them. Hence, this appeal has been preferred by the State.

17. Now the point for determination in this appeal against the acquittal is whether the findings of the learned trial judge is perverse in nature, warranting interference from this Court?

18. The Point:-

18(a) The learned trail Judge has acquitted the accused on the ground that in Ex.P.1-complaint the complainant/P.W.1 has stated that at the time of occurrence both the accused were digging a bit in the backyard of his (P.W.1) house, but while deposing before the Court as P.W.1 he has stated that both the accused were digging a pit in front of his (P.W.1) house. The other discrepancy pointed out by the learned Trial judge is that M.O.1-blood stained lungi, according to P.W.1, was handed over by P.W.1 in the hospital at the time of taking treatment, but, according to P.W.11 the Head Constable, who had registered the case on the basis of the Ex.P.7-complaint preferred by P.W.1, the blood stained lungi M.O.1 was produced by P.W.1 at the police station along with M.O.2-blood stained

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underwear, which were recovered under Ex.P.2-Form 95 and sent to the Court. Only on these two points the learned Trial Judge has come to the conclusion that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. But the trial Court has failed to consider the evidence of the injured witness P.W.1 which was corroborated by P.W.2 & P.W.3 and also by medical evidence.

18(b) According to P.W.1, A1 at the time of occurrence had hit him with a crowbar on his head causing grievous injury and both the accused together have assaulted on the right leg with separate crowbars causing injuries resulting fracture in the tibia bone. This part of the evidence of injured witness P.W.1 has been corroborated by the evidence of P.W.9 & P.W.10. P.W.9, Assistant Surgeon in the Government Hospital Erode, would depose that on 2.11.1996 at about 10.50 am P.W.1 injured was brought to the hospital and admitted in the hospital and treated by him. Ex.P.5 is the copy of the accident register issued by P.W.9 for the injury sustained by P.W.1. The Doctor has opined that injury No.5 is a grievous injury shown symptoms of fracture in the middle of the right leg below the knee. P.W.10 is the doctor, who had treated P.W.1 in the private hospital. Ex.P.6 is the wound certificate given by P.W.10 for the injury sustained by P.W.1. The doctor has opined that the injury Nos.2 to 5 mentioned in Ex.P.6 are all simple injuries, but injury No.1 is grievous in nature. P.W.13 is the radiologist, who had taken x-ray for the fracture sustained by P.W.1 on the right leg. M.O.4(series) are the x-rays. P.W.13 has opined that P.W.1 has sustained fracture of tibia bone in the right leg.

18(c) The learned counsel appearing for the respondents/accused would contend that even before P.W.9 & P.W.10, doctors, P.W.1 has not specifically stated that the injuries were caused to him by his sons, but P.W.1, according to P.W.9 & P.W.10, has stated at the time of admission that the injuries were caused to him by known persons. The failure to mention names of the accused to P.W.9 & P.W.10 in my opinion will in no way shatter or hamper the case of the prosecution. While deposing before the Court as well as in Ex.P.1-complaint P.W.1, the injured, has specifically stated that he was assaulted with crowbar by his sons viz.Prabakaran & Elangovan (A1 & A2 herein). Under such circumstances, I am of the view that the findings of the learned Trial Judge that the charge levelled against the accused were not proved beyond any reasonable doubt cannot be sustained and warrants interference from this Court. Point is answered accordingly.

19. In the result, the findings of the learned Trial Judge in C.C.No.145 of 1997 on the file of the Judicial Magistrate No.I, Erode, is set aside and A1 is convicted under Section 326 & 506(ii) IPC and A2 is convicted under Section 324 & 506(ii) IPC.

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Give notice to A1 & A2 for appearance for questioning under Section 248(2) of Cr.P.C., about the sentence and also give notice to the complainant and post the matter on 6.6.2007 as the first case.

ssv

04.06.2007

Both A1 and A2 along with their father /complainant/ victim are present today(06.06.2007) . The father of A1 and A2 magnanimously represents before this Court that he has reconciled with the accused who have repented for their act and that instead of sentencing them to imprisonment they may be shown some leniency and may be released under Probation of Offenders Act 1958. Both A1 and A2 admitting their guilt and felt sorry for the act , they have committed against their father/complainant/victim.

2. Under such circumstances, I am of the view that instead of sentencing both A1 and A2 to imprisonment, they can be released under Probation of Offenders Act 1958.

3. The learned Additional Public Prosecutor also represents that both A1 and A2 are the first offenders.

4. Having regard to the circumstances of the case, including the nature of the offence and the character, I am of the view that in the interest of justice, A1 and A2 shall be released on Probation of good conduct, on each of them executing a bond for Rs.5,000/-( Rupees Five thousand) only with two sureties each for a likesum to the satisfaction of Judicial Magistrate No.1, Erode for one year and they shall receive sentence when called upon during the said period, to keep the peace and be of good behaviour under Section 4(1) of Probation of Offenders Act 1958. Both A1 and A2 shall execute the above said bond within a period of seven days from today(6.6.2007) ie ., on or before 13.6.2007

6.6.2007

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To,

1. The Judicial Magistrate No.I,
   Erode.

2. -Do- Thro' The Chief Judicial Magistrate,
   Erode.

3. The Sub Inspector of Police,
Erode Taluk Police Station,

4. The public Prosecutor
High Court,Madras

+1 cc to Mr.A.K.Kumarasamy, Advocate Sr.No.32044.

KLT(CO)
DCP/6.6.07

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